IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN D. VILLABONA,	§	
	§	No. 609, 2010
Appellant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
DELAWARE REAL	§	C.A. No. 09A-10-001
ESTATE COMMISSION,	§	
	§	
Appellee Below-	§	
Appellee.	§	

Submitted: December 23, 2010
Decided: January 27, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**.

O R D E R

This 27th day of January 2011, it appears to the Court that:

(1)   Appellant, John D. Villabona, appeals from a Superior Court order affirming a Delaware Real Estate Commission ("DREC") order that placed Villabona's real estate broker's license on probation for a minimum of six months. Villabona raises two arguments on appeal. First, Villabona contends that DREC violated title 29, section 10128(b)(5) of the Delaware Code because its decision was not a "concise statement." Second, Villabona contends that DREC's finding that he engaged in "fraudulent and/or dishonest dealing" is not supported by substantial evidence. We find no merit to Villabona's appeal and affirm.

(2)   Villabona is a real estate broker licensed in Delaware. He acted as a dual agent in a real estate transaction. In that capacity, he prepared an agreement of sale and other related documents, including an "occupancy prior to settlement" agreement ("OPS"), which allowed the buyers to occupy the property immediately and required them to provide the sellers with a substantial deposit.

(3)   After investigating that transaction, the State filed a formal complaint, alleging that Villabona had violated title 24, section 2912 of the Delaware Code.[1] DREC held an emergency hearing and a full hearing, and concluded that Villabona violated sections 2912(a)(6) and (a)(12) because "[he] should have consulted with an attorney to draft an appropriate document reflecting the parties' intent and protecting their interests."[2]   DREC also concluded that: (i) Villabona violated sections 2912(a)(1) and (a)(12) because "the Agreement of Sale did not represent the actual agreement between the parties and did not protect [the buyer's] interests;"[3] and (ii) Villabona violated sections 2912(a)(6) and (a)(12) because "an [OPS] was not the appropriate document to use in a lease purchase agreement and

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[1] Section 2912(a) relevantly provides: "The Commission . . . may discipline a certificate-holder . . . where [he] . . . is guilty of: (1) Making any substantial misrepresentation; or . . . (6) Being incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interest of the public; or . . . (12) Any other conduct, whether of the same or a different character from that specified in this section, which constitutes improper, fraudulent or dishonest dealing."
[2] DREC Decision, at 19–20.
[3] *Id.* at 21–22.

did not protect the parties' interests."[4] Finally, DREC concluded that Villabona

violated sections 2912(a)(1) and (a)(12) because he used an [OPS] rather than a

lease and included a "nonrefundable deposit" provision even though "it was

intended that the deposit would be refunded."[5] Each time DREC found that

Villabona violated section 2912(a)(12), DREC stated that Villabona's conduct

constituted "improper, fraudulent, and/or dishonest dealing."[6] DREC placed

Villabona's real estate broker's license on probation for a minimum of six months.

The Superior Court affirmed DREC's decision, and this appeal followed.

(4)   Upon appeal from a DREC decision, we review the record for errors

of law and determine whether substantial evidence exists to support DREC's

findings of fact and conclusions of law.[7] "Substantial evidence equates to 'such

relevant evidence as a reasonable mind might accept as adequate to support a

conclusion.'"[8]

(5)   Villabona argues that DREC violated title 29, section 10128(b)(5)

because it "described [] Villabona's conduct with the vague, [non-concise,] and

misleading phrase "improper, fraudulent, and/or dishonest." Section 10128(b)

provides that "[e]very case decision of any agency shall be incorporated in a final

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[4] *Id.* at 22–23.
[5] *Id.* at 23–24.
[6] *Id.* at 20, 22, 23, 24.
[7] *See Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).
[8] *Id.* (quoting *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

order which shall include, where appropriate: . . . (5) A concise statement of the agency's determination or action on the case." The Merriam-Webster Dictionary defines "concise" as "marked by brevity of expression or statement" and "free from all elaboration and superfluous detail."[9] We conclude that DREC did not err in describing Villabona's conduct as "improper, fraudulent, and/or dishonest." Rather, it simply tracked the language of section 2912(a)(12).[10] Although that provision uses only the conjunction "or," DREC's inclusion of the conjunction "and/or" did not amount to a violation of section 10128(b)(5).

(6) Villabona also argues that DREC's finding that he had engaged in "fraudulent, and/or dishonest dealing" is not supported by substantial evidence. Villabona asks this Court to strike any reference to "fraudulent" or "dishonest" conduct, because "[w]hen [he] applies for a broker's license in another state, such as Florida, he must produce [DREC's] Decision and Order" and the "imprecise language will place [his] livelihood in jeopardy." But, DREC simply tracked the language of section 2912(a)(12). Its use of the conjunction "and/or" means that "fraudulent" or "dishonest" may not apply.[11] A careful reader of the factual findings and conclusions of law contained in DREC's decision will note the use of

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[9] MERRIAM-WEBSTER DICTIONARY (online edition).

[10] *See* 24 *Del. C.* § 2912(a) ("The Commission . . . may discipline a certificate-holder . . . where [he] . . . is guilty of: . . . (12) Any other conduct . . . which constitutes *improper, fraudulent or dishonest dealing*." (emphasis added).

[11] MERRIAM-WEBSTER DICTIONARY (online edition) (defining "and/or" as "used as a function word to indicate that two words or expressions are to be taken together *or individually*") (emphasis added).

"and/or" and will recognize that DREC regarded Villabona's conduct as improper and careless.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice